

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE OR CHANGE

The agency identified below in box 1 provides notice of proposed rule or change pursuant to Utah Code Subsections 63-46a-4(2) and (4). Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

State of Utah Division of Administrative Rules (DAR) 4120 State Office Building; 450 North Main PO Box 141007 Salt Lake City, UT 84114-1007 Phone: (801) 538-3218, FAX: (801) 538-1773 State E-mail: <i>asdomain.asitmain.rules</i>	<table style="width: 100%; border-collapse: collapse;"><tr><td style="border-bottom: 1px solid black; padding: 2px 5px;">DAR file no.:</td><td style="border-bottom: 1px solid black; width: 50%;"></td></tr><tr><td style="border-bottom: 1px solid black; padding: 2px 5px;">Utah Admin. Code ref. (R no.):</td><td style="border-bottom: 1px solid black; padding: 2px 5px;">R156-1-109</td></tr><tr><td style="border-bottom: 1px solid black; padding: 2px 5px;">Date filed:</td><td style="border-bottom: 1px solid black; width: 50%;"></td></tr><tr><td style="border-bottom: 1px solid black; padding: 2px 5px;">Time filed:</td><td style="border-bottom: 1px solid black; width: 50%;"></td></tr><tr><td style="border-bottom: 1px solid black; padding: 2px 5px;">Received by:</td><td style="border-bottom: 1px solid black; width: 50%;"></td></tr></table>	DAR file no.:		Utah Admin. Code ref. (R no.):	R156-1-109	Date filed:		Time filed:		Received by:	
DAR file no.:											
Utah Admin. Code ref. (R no.):	R156-1-109										
Date filed:											
Time filed:											
Received by:											

1. Department:	Commerce
Agency:	Occupational and Professional Licensing
Room no., building:	Heber M. Wells Building - 4th Floor
Street address:	160 East 300 South
Mailing address:	PO Box 146741
City, state ZIP:	Salt Lake City UT 84114-6741
Contact person:	W. Earl Webster
Telephone:	(801) 530-7632
FAX:	(801) 530-6511
Internet E-mail:	brdopl.ewebster@email.state.ut.us

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2. Title of rule or section (catchline):	
--	--

Presiding Officers

3. Type of notice:	<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 25%; border-bottom: 1px solid black;"></td><td style="width: 25%; border-bottom: 1px solid black;"></td><td style="width: 25%; border-bottom: 1px solid black;"></td><td style="width: 25%; border-bottom: 1px solid black;"></td></tr><tr><td style="padding: 2px 5px;">Proposed rules</td><td style="padding: 2px 5px;">New</td><td style="padding: 2px 5px;">X Amendment</td><td style="padding: 2px 5px;">Repeal</td></tr><tr><td colspan="4" style="padding: 2px 5px;">Repeal and reenact</td></tr></table>					Proposed rules	New	X Amendment	Repeal	Repeal and reenact			
Proposed rules	New	X Amendment	Repeal										
Repeal and reenact													
Other rule types	Change in proposed rule (changes original proposed rule file no.: _____)												

4. Purpose of the rule or reason for the change:	<p>The Division needs to clarify the responsibilities of the Residence Lien Recovery Fund Program Coordinator with respect to formal and informal adjudicative proceedings. Proposed changes also provide the Residence Lien Recovery Fund Program Coordinator with authority to approve or deny formal claims without a Board hearing in very limited circumstances. These proposed changes are codifying existing Division practices.</p>
--	---

5. This rule or change is a response to comments by the Administrative Rules Review Committee.	<table style="margin: auto;"><tr><td style="border-bottom: 1px solid black; width: 20px;"></td><td style="border-bottom: 1px solid black; width: 20px;"></td></tr><tr><td style="padding: 2px 5px;">Ye</td><td style="padding: 2px 5px;">X No</td></tr><tr><td style="padding: 2px 5px;">s</td><td style="padding: 2px 5px;"></td></tr></table>			Ye	X No	s	
Ye	X No						
s							

6. Summary of the rule or change:	<p>In Section 109 - Added that program coordinators shall be the presiding officer for formal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c) and R156-46b-201(e). Added that the authority of the presiding officer in</p>
-----------------------------------	--

formal adjudicative proceedings described in Subsection R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects. Updated informal adjudicative proceedings to also include R156-46b-202(1)(i). Added that a program technician may also sign an informal order provided the wording of the order has been approved in advance by the program coordinator.

7. Aggregate anticipated cost or savings to:

State budget: The Division will incur minimal costs, less than \$50.00, to reprint this rule once the proposed changes have been made effective. Any costs incurred will be absorbed in the Division's current budget. With the addition of authority for the Residence Lien Recovery Fund Program Coordinator to be able to close formal claims in limited circumstances, the Fund will save approximately \$1,000 in unneeded formal proceeding costs. However, since the Residence Lien Recovery Fund is self-funded, no savings will revert to the state budget.

Local government: Proposed changes do not apply to local governments.

Other persons: The Division does not anticipate any cost or savings to other persons as a result of these proposed changes other than formal Residence Lien Recovery Fund claims may be closed in a more timely manner. It should be noted that since Residence Lien Recovery Fund Board members may be spared from attendance at formal claim proceedings, they may experience a negative fiscal impact since they would not be receiving per diem. However, the nature, timing and amount are all indeterminable because the number and nature of claims filed with the Fund vary from year to year.

8. Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

The Division does not anticipate any cost for affected persons as a result of these proposed changes as identified above.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

The purpose of this rule change is to allow the Residence Lien Recovery Fund Program Coordinator to be the presiding officer in limited circumstances, similar to the Division's existing practice with Bureau Managers. Because this rule simplifies the Residence Lien Recovery Fund claim processing procedure, there will be a positive business impact to the Fund and, as a result, to the construction industry that contributes to the Fund, and to Utah homeowners, who are an indirect beneficiary of the Fund. The amount of the business impact cannot be determined, because the number and nature of claims filed with the Fund vary from year to year. Ted Boyer, Executive Director

10. This rule or change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required): Subsection 58-1-106(1)

Federal citations (optional):

11. This rule or change adds or updates an incorporated reference (submit a copy to DAR): Ye X No
s

Reference title and date of issue or edition:

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the *Utah State Bulletin*. See Section 63-46a-5 and Rule R15-1 for more information.)

Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 02/14/2002

A public hearing (optional) will be held on (mm/dd/yyyy): at (time):

at (place):

13. This rule or change may become effective on (mm/dd/yyyy): 02/15/2002

14. Indexing information - keywords (maximum of four, in lower case):

diversion programs, licensing, occupational licensing

15. Indexing information - affected industries (two-digit SIC codes):

n/a

16. Attach a WordPerfect document containing the text of this rule or change (filename):

R156-1.pro

To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms may be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

AGENCY AUTHORIZATION

Agency head or designee, and title:	J. Craig Jackson, Director	Date (mm/dd/yyyy):	12/19/2001
-------------------------------------	----------------------------	--------------------	------------

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rules of the Division of Occupational and Professional Licensing.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Except as otherwise specified in writing by the director, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as otherwise specified in writing by the director, the presiding officer for ~~informal~~ adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i), (k), (l), (o), (q), and (t).

(b) Bureau managers or program coordinators. The bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c) and R156-46b-201(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects; and

(ii) ~~the~~ informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (j), (p), (r) and (s).

(iii) At the direction of the a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the ~~[format]~~ wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(m).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

KEY: diversion programs, licensing, occupational licensing

[~~December 18, 2001~~]2002

58-1-106(1)

Notice of Continuation June 2, 1997